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08/411017

SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/411,017 03/27/95 ZDEBLICK

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ISABELLA EXAMINER

33M1/0715

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ART UNIT PAPER NUMBER

3308

DATE MAILED: 07/15/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 3/8/96 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

☒ Claims 1-27 are pending in the application.

Of the above, claims 15-27 are withdrawn from consideration.

- ☐ Claims have been cancelled.
- ☐ Claims are allowed.
- ☒ Claims 1-14 are rejected.
- ☐ Claims are objected to.
- ☐ Claims are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. ; filed on .
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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***Election/Restriction***

1. Applicant's election with traverse of claims 1-14 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that claims 23-27 of group 3 should also be considered because the search and examination can be readily conducted for both groups is not a proper basis for traversal. This is not found persuasive because the implant does not require the specific steps for drilling the hole, filling the interior and rotating the device..

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 15-27 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 8.

***Claim Rejections - 35 USC § 112***

3. Claim 4 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4, it is not clear if the recitation of "larger" is directed to size or number of slots.

Claim 6, it is not clear what is meant by "an effective width"

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Claim 7 as worded is meaningless. It is not clear what is meant by "threads are interrupted by said side walls and circumferentially continuous thereafter".

***Double Patenting***

4. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

5. Claims 1,2 and 12 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1,2 12 of copending application Serial No. 08/413353. This is a *provisional* double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the

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invention was made, owned by the same person or subject to an obligation of assignment to the same person.

7. Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over Kuslich, et al.

Kuslich, et al discloses a fusion device for joining two vertebrae comprising: an elongated body 122 having a length and first diameter at a first end 136. The body includes an outer surface with a pair of opposing cylindrical portions 128 connected by a pair of flat opposite side walls 126. (see figure 14) While the embodiment of figure 14 does not include external threads, such feature is shown in the alternative embodiment of figure 1. It would have been obvious to add threads onto the cylinder portions of the device in figure 14 to facilitate threading the fusion device into the bone for better securement.

Claim 2, see the tapering outer surface of the device.

Claim 3, see openings in the opposite side walls communicating with the interior of the device.

Claim 5, see opposed slots elongated along a length of the body.

Claim 6, the width of the slots in the cylindrical portions is greater than the width of the cylindrical portions.

Claim 7, in so far as definite, the claim appears to be readable on Kuslich, et al as modified.

Claim 8 see element 147.

Claims 9 and 10, see figure 14.

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Claim 11, see notch 146.

Claims 12-14, see rejection to claims 1-3 supra.

Any inquiry concerning this communication should be directed to DAVID J  
ISABELLA at telephone number (703)308-3060.

A handwritten signature in black ink, appearing to read 'DJI', with a horizontal line extending to the right.

**DAVID J ISABELLA**  
**PRIMARY EXAMINER**

DJI  
June 30, 1996